

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HAROLD E. MONTAGUE,

Case No. 2:22-cv-00034-RFB-VCF

Plaintiff,

ORDER

v.

MAINWARNING, et al.,

Defendants.

I. DISCUSSION

On January 6, 2022, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights complaint under 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. (ECF Nos. 1-1, 1). Plaintiff’s application to proceed *in forma pauperis* was filed on the incorrect form, and, on January 11, 2022, the Court denied the application and ordered Plaintiff to file a fully complete application to proceed *in forma pauperis*, on the correct form, or pay the \$402 filing fee by March 11, 2022. (ECF No. 3.)

Plaintiff filed a motion requesting an extension of time to file his application to proceed *in forma pauperis*. (ECF No. 6.) The Court granted Plaintiff’s motion and gave Plaintiff until May 29, 2022, to file a complete application to proceed *in forma pauperis* or pay the full \$402 filing fee. (ECF No. 8.) Plaintiff has filed two more motions for an extension. (ECF Nos. 9, 10.) In his motions, Plaintiff states that he has submitted requests for the appropriate paperwork to complete his application to proceed *in forma pauperis*, but that NDOC officials have failed to process his paperwork. (*Id.*)

The Court notes that other inmates have continued to successfully file applications to proceed *in forma pauperis*, including inmates housed at High Desert State Prison, where Plaintiff is currently housed. Nonetheless, the Court will grant Plaintiff one more extension to file a fully complete application to proceed *in forma pauperis* or pay the \$402 filing fee. Plaintiff’s application must include all three of the following documents:

- 1 (1) a completed **Application to Proceed *in Forma Pauperis* for Inmate**, on this
 2 Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on
 3 page 3),
 4 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
 5 official (i.e. page 4 of this Court's approved form), and
 6 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
 7 **previous six-month period.**

8 In the event that Plaintiff continues to experience difficulty obtaining the required
 9 financial certificate and inmate account statement for the previous six-month period from
 10 prison officials, Plaintiff shall file a declaration detailing when he requested the
 11 documents, who he spoke to about the status of the documents, who he followed up with
 12 after he did not receive the documents, and their responses. Plaintiff's declaration shall
 13 include dates of his requests, dates of his follow-up requests, names of the prison officials
 14 that he spoke to about the matter, and their responses. If Plaintiff's declaration
 15 demonstrates that he has done all that was possible to acquire the documents from prison
 16 officials, the Court will consider his application to proceed *in forma pauperis* complete.¹

17 Accordingly, the Court will grant Plaintiff's motions for an extension. (ECF Nos. 9,
 18 10.) On or before **August 14, 2022**, Plaintiff shall file pay the \$402 filing fee or file a fully
 19 complete application to proceed *in forma pauperis* containing all three of the required
 20 documents or, alternatively, the first three pages of the application to proceed *in forma*
 21 *pauperis* and a declaration detailing the efforts he took to acquire the financial certificate
 22 and inmate account statement from prison officials. Absent unusual circumstances, the
 23 Court will not grant any further extensions of time.

24 If Plaintiff does not pay the \$402 filing fee or file a fully complete application to
 25 proceed *in forma pauperis* with all three required documents or, alternatively, the first
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27 ¹ Plaintiff must still submit the first three pages of the application to proceed *in*
 28 *forma pauperis* on this Court's approved form with his declaration. If Plaintiff does not
 submit the first three pages of the application to proceed *in forma pauperis* with the
 declaration, this case will be subject to dismissal without prejudice.

1 three pages of the application to proceed *in forma pauperis* and a declaration detailing
2 the efforts he took to acquire the financial certificate and inmate account statement from
3 prison officials on or before **August 14, 2022**, this case will be subject to dismissal without
4 prejudice for Plaintiff to file a new case with the Court when Plaintiff is able to acquire all
5 three of the documents needed to file a fully complete application to proceed *in forma*
6 *pauperis*.

7 **I. CONCLUSION**

8 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's motions for
9 an extension of time (ECF Nos. 9, 10) are granted.

10 IT IS FURTHER ORDERED the Clerk of the Court shall send Plaintiff the approved
11 form application to proceed *in forma pauperis* by an inmate, as well as the document
12 entitled information and instructions for filing an *in forma pauperis* application.

13 IT IS FURTHER ORDERED that on or before **August 14, 2022**, Plaintiff shall either
14 pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52
15 administrative fee) or file with the Court:

- 16 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
17 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
18 signatures on page 3),
- 19 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
20 official (i.e. page 4 of this Court's approved form), and
- 21 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
22 **previous six-month period**.

23 IT IS FURTHER ORDERED that if Plaintiff is not able to obtain his financial
24 certificate and inmate account statement from prison officials, Plaintiff shall file the first
25 three pages of the application to proceed *in forma pauperis* together with a declaration
26 detailing the efforts he took to acquire the financial certificate and inmate account
27 statement from prison officials.

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1 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
2 application to proceed *in forma pauperis* with all three documents, or, alternatively, the
3 first three pages of the application to proceed *in forma pauperis* and a declaration detailing
4 the efforts he took to acquire the financial certificate and inmate account statement from
5 prison officials, or pay the full \$402 filing fee for a civil action on or before **August 14,**
6 **2022**, this case will be subject to dismissal without prejudice for Plaintiff to refile the case
7 with the Court, under a new case number, when Plaintiff has all three documents needed
8 to file a complete application to proceed *in forma pauperis*.

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10 DATED THIS 14th day of June 2022.
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12 UNITED STATES MAGISTRATE JUDGE
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